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REPORT AND RECOMMENDATIONS MÀDE BY THE PANEL OF COMMISSIONERS CONCERNING THE SECOND INSTALMENT OF CLAIMS FOR DEPARTURE FROM IRAQ OR KUWAIT (CATEGORY "A" CLAIMS)

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INTRODUCTION

This second report contains the recommendations to the Governing Council of the Panel of Commissioners (the "Panel") appointed to review claims for departure from Iraq or Kuwait ("category 'A' claims") concerning the second instalment of claims,[1] pursuant to article 37 (e) of the Provisional Rules for Claims Procedure (the "Rules").[2] Category "A" claims are among the "most urgent claims" for which the Governing Council Decision on "Criteria for Expedited Processing of Urgent Claims"[3] has set forth "simple and expedited procedures" in order to provide "prompt compensation in full" or "substantial interim relief". This report makes compensation recommendations for the category "A" claims reviewed in the second instalment of claims submitted to the Panel by the Executive Secretary of the Commission. In considering these claims, the Panel has, in accordance with article 31 of the Rules, applied Security Council resolution 687 (1991), the criteria

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[1] The recommendations concerning the first instalment of claims are contained in the "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of Claims for Departure from Iraq or Kuwait (Category 'A' Claims)", (S/AC.26/1994/2), (hereinafter referred to as the "first report"). General information regarding the establishment of the United Nations Compensation Commission in the aftermath of the Gulf crisis as well as the composition of the Panel are contained in the introduction to the first report.

[2] S/AC.26/1992/10, article 37 (e) requires that "[e]ach Panel will report in writing through the Executive Secretary to the Governing Council on the claims received and the amount recommended to be allocated to each Government or other entity for each consolidated claim. Each report will briefly explain the reasons for the recommendations and, to the extent practicable within the time-limit, contain a breakdown of the recommendations in respect of individual claims within each consolidated claim".

[3] S/AC.26/1991/1, (hereinafter referred to as "Decision 1").

established by the Governing Council for this category of claims and other pertinent decisions of the Governing Council.

As described in the first report, the Panel held three preparatory meetings with the secretariat of the Commission to discuss the methodology and procedures used by the secretariat in the processing of the first instalment of category "A" claims. The same methodology and procedures have been applied to the second instalment of claims. The Panel held one substantive session to review claims in the second instalment from 30 January to 1 February 1995.

I. CATEGORY "A" CLAIMS IN GENERAL

Category "A" claims are claims for departure from Iraq or Kuwait during the period of 2 August 1990 to 2 March 1991. For a more detailed description of the nature of category "A" claims, the Claim Form "A" and the amounts that can be claimed under this category, reference is made to Part I of the first report.

II. EVIDENTIARY STANDARD APPLICABLE TO CATEGORY "A" CLAIMS

The evidentiary standard applicable to category "A" claims is stated in Decision 1 and more specifically in article 35 (a) of the Rules. As is explained more fully in Part IV.D., infra, the overall majority of the claims in the second instalment were verified to meet this standard by way of computerized matching of the claims in question against an Arrival/Departure Database that was developed from documentary evidence such as Arrival/Departure Records made available by various Governments and international organizations. The Panel therefore was not required to review evidence attached to those claim forms. For reasons explained below (see Part III.B., infra), however, for a limited number of claims in the second instalment documentary evidence attached to the forms was reviewed for verification purposes.

III. METHODOLOGY FOR PROCESSING CATEGORY "A" CLAIMS

A. Several methods

Part III.A. of the first report sets out the different methods envisaged by the Rules for the verification of category "A" claims, i.e., matching, sampling and additional verification "as circumstances warrant". As in the first instalment, the computerized matching of the claims against the Arrival/Departure Database has been the methodology primarily relied upon for the verification of claims in the second instalment. For a number of claims, the evidence attached to the forms was reviewed manually (for more details see Part III.B., infra).

A first matching run was performed for all claims that were filed with the Commission before 1 July 1993. A second matching run was subsequently performed for all claims the verification of which had not been attempted in the context of the first instalment, i.e., claims filed later than 1 July 1993. (For the number of claims and the country-wise composition comprising the first instalment, see Part III.B. of the first report). Also included in the second matching run were claims that were filed prior to 1 July 1993 but which were affected by technical deficiencies preventing them from being considered for the first instalment, provided that such deficiencies had been remedied in time to permit inclusion in the second matching run. Claims included in the second matching run were verified against two additional sets of Arrival/Departure Records that had not been used in the first run because of technical problems, i.e., those provided by the Governments of Iran and Jordan.

B. The second instalment of category "A" claims

In determining the total number of claims and the country-wise composition comprising the second instalment of category "A" claims the Panel applied the general guidelines set forth by the Governing Council for the composition of the several instalments of category "A" claims and took into account various considerations

such as the total number of claims submitted by different countries, the dates of their submission, the estimate of time it would take to process claims even through expedited procedures, and the estimate of the funds that might be available to meet the second instalment of category "A" claims. The Panel's recommendations as set out in Part V, infra, for the payment of claims listed in the Summary Table attached to this report, are made according to such criteria and procedures, as elaborated below.

The Panel reviewed and recommends for payment in the second instalment:

(a) all of the claims verified in the first matching run that were not included in the first instalment (see Part III.B. of the first report);

(b) from the second matching run, up to 200 claims for each country (or the total number of claims matched if the latter was less than 200), applying a criterion similar to the one approved by the Governing Council for the composition of the first instalment (see Part III.B.(b) of the first report);

(c) for each country, 50 per cent of the claims exceeding 200 that were verified in the second matching run against the records provided by the Governments of Iran and Jordan;

(d) for those countries that had submitted claims within the established deadlines but where neither the first nor the second matching runs yielded any verified claims, a number of claims sufficient to attain an equitable representation in the second instalment of such countries, based on a manual review of the evidence attached to the claims in question (see supra, Part III. A.).

The number of claims per submitting country that the Panel recommends for payment in the context of this instalment is listed

in the column "Number of Claims Recommended for Payment" of the Summary Table attached to this report.

IV. THE PROCESSING OF THE SECOND INSTALMENT OF CLAIMS

A. Processing by the secretariat

All of the claims contained in the second instalment were subjected to the processes described in Part IV.A. of the first report.

B. Validation

As was the case for the claims contained in the first instalment, before matching the claims in the second instalment against the Arrival/Departure Database, the claims were passed through a preliminary computerized screening process hereinafter referred to as "validation". The purpose of validation is threefold. First, some aspects of the format of the claims are checked. Second, the Iraqi claimants are separated from the non-Iraqi claimants. Third, the validation programme checks whether there are any duplicate claims in the "A" claims category.

As explained more fully in Part IV.B.3. of the first report, the Panel instructed the secretariat to analyze further the claims that have been identified and separated as "possible duplicates" to confirm whether such claims are indeed duplicates. The secretariat is in the process of examining those claims. In view of the considerations outlined in this Part of the first report, the Panel recommends that Governments keep an accurate record of the persons to whom amounts awarded are paid in order to minimize the risk of multiple recovery on the basis of a duplicate "A" claim.

C. Other issues

1. Departure date outside the jurisdictional period

As in the first instalment, claimants in the second instalment who stated in their claim form a "date of departure" outside the period from 2 August 1990 to 2 March 1991, were deemed by the Panel to have misinterpreted the meaning of the term "date of departure" and, therefore, were not dismissed on the basis of such a date if the claimants in question nevertheless matched against an Arrival/Departure Record establishing departure within the jurisdictional period.

2. Limitations on claiming in more than one category

The Governing Council's decision on "Multi-Category Claims"[4] establishes that claimants who have selected a higher amount under category "A" (US$ 4,000 or 8,000) and have also filed a claim in category "B", "C" or "D", will be deemed to have selected the corresponding lower amount under category "A". Pursuant to paragraph 2 of the Governing Council Decision on "Priority of Payment and Payment Mechanism",[5] successful individual claimants whose category "A" claims are being so adjusted will only receive an initial payment of US$2,500; successful claimants whose category "A" family claims are being so adjusted will, after an initial payment of US$ 2,500, receive only an additional payment under category "A" of US$ 2,500 in the allocation stage of payments described in paragraph 6 of Decision 17. No later than at the beginning of the allocation stage of payments, the secretariat will

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[4] S/AC.26/Dec.21 (1994), (hereinafter referred to as "Decision 21").

[5] S/AC.26/Dec.17 (1994), (hereinafter referred to as "Decision 17").

inform governments as to which of its claimants are affected by these limitations.[6]

The Panel recalls that attention was drawn in Part IV.C.2. of the first report to the problem presented by claimants who had filed category "A" claims for US$ 4,000 or US$ 8,000 and by so doing had expressly agreed not to file a claim in any other category, but nevertheless had also filed a claim under category "B", "C" or "D".

It is the Panel's view that the strict application of the applicable legal principles would require that a claimant must be bound by his/her agreement that once he/she submitted a category "A" claim for US$ 4,000 or US$ 8,000, he/she would not submit a claim in any other category, and that if the claimant had nevertheless submitted claims in any other category, then the legal conclusion should be that the filing of a claim in any other category would be treated as invalid.

The Governing Council, on the basis of "further background information from the secretariat on the circumstances appearing to give rise to multi-category filings in claim categories 'A', 'B', 'C' and 'D'", by its Decision 21 determined that a claimant who had filed a category "A" claim for US$ 4,000 or US$ 8,000 and who had also filed a claim in another category, should be deemed to have filed a category "A" claim for US$ 2,500 or US$ 5,000, thus in effect retrospectively amending the "A" claim forms submitted for

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[6] The Panel notes the decision of the Governing Council on "Multi-Category Departure Claims" (S/AC.26/Dec.24 (1994), that addresses the situation where claimants filing a claim in category "A" had also filed departure claims in category "C" and/or "D". Since the application of the remedial measures included in this decision will take place in conjunction with the processing of claims in category "C" and/or "D", the Panel has made its recommendations for category "A" claims independent of the fact as to whether or not category "A" claimants have also filed departure claims in category "C" and/or "D".

US$ 4,000 or US$ 8,000 without such amendment having been requested by either the Governments or the claimants concerned.

In the view of the Panel, the resultant situation operates to the detriment of claimants who submitted category "A" claims and acted in accordance with the rules which required them to agree not to file claims in any other category. By so abiding by the rules these claimants have been prejudiced in two ways.

Claimants who were not eligible to file category "B", "C" or "D" claims since they had filed category "A" claims for US$ 4,000 or US$ 8,000, but nevertheless had filed such claims, were now having their "B", "C" or "D" claims made eligible, which would increase the number of "B", "C" or "D" claims competing for payment out of the same funds, reducing pro tanto the funds available to those who had respected the rules.

Claimants who had respected the rules would be further prejudiced as they would be denied the opportunity of filing a category "B", "C" or "D" claim and would be put in the position of receiving the subsequent payment at the same time as those who had not abided by the rules.

The Panel is of the view that the Governing Council may wish to review this matter. The Panel would recommend that the legitimate interests of category "A" claimants who had filed claims for US$ 4,000 or US$ 8,000 and had abided by the rules by not filing in any other category should be protected, and that a just balance between such claimants and those who will benefit from the application of Decision 21 should be maintained.

In principle, a fair solution would be for all claimants who had submitted category "A" claims for US$ 4,000 or US$ 8,000 but had not submitted claims in any other category to be allowed an opportunity to amend their category "A" claims so as to reduce the claimed amount to US$ 2,500 or US$ 5,000 and to lodge a category "B", "C" or "D" claim within a reasonable period to be determined by the Council. However, should this solution not be considered

feasible, then the Panel would recommend that all successful claimants who had submitted category "A" claims for US$ 4,000 or US$ 8,000 but had not submitted claims in any other category, receive full payment of US$ 4,000 or US$ 8,000, pursuant to the terms of Decision 17, before any additional amounts beyond the initial US$ 2,500 are paid to the category "A" claimants who submitted claims for US$ 4,000 or US$ 8,000 but had also filed claims in other categories.

3. Interest

On the basis of the considerations formulated in Part IV.C.3. of the first report, the Panel reiterates its recommendation that interest should be paid on the awarded amounts in category "A" claims in accordance with the Governing Council Decision on "Awards of Interest".[7] With respect to category "A" claims, the phrase "the date the loss occurred" in Decision 16 should be interpreted to be 2 August 1990.

D. Computerized verification of category "A" claims in the second instalment

1. Departure from Kuwait and Iraq during the Gulf crisis

With regard to the background information on the number of departees from the Persian Gulf region and the circumstances of their departure, reference is made to Part IV.D.1. of the first report.

2. The computerized matching

The second instalment of claims was subjected to the same computerized matching process that had been used for the verification of the first instalment of category "A" claims. The goal of this computerized verification process was to determine

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[7] S/AC.26/1992/16, (hereinafter referred to as "Decision 16").

whether a given claimant appears in one or more of the records that constitute the Arrival/Departure Database and which the Panel found to establish departure from Kuwait or Iraq during the relevant jurisdictional period. In order to achieve this goal, the secretariat used the same specially designed software as in the first instalment. The general characteristics of this computerized process and the software supporting it were reviewed by and met the approval of the Panel; they are described in detail in Part IV.D.4. of the first report.

3. The Arrival/Departure Records

The Arrival/Departure Records used by the secretariat for the computerized verification of claims in the second instalment include all those utilized for the verification of claims in the first instalment and referred to in Part IV.D.2. of the first report. In addition, a number of Arrival/ Departure Records provided by the Governments of Iran and Jordan which had not been utilized for the first matching run, were used to verify claims in this instalment.

4. Evidentiary value of the various records

The evidentiary value of the records provided by the Governments of Iran and Jordan was determined by the Panel on the basis of the same considerations made with respect to the records used for the verification of claims in the first instalment. The records provided by these two Governments, in some instances in conjunction with other materials, were found to show departure from Iraq or Kuwait during the period of 2 August 1990 to 2 March 1991.

The Panel, thus, determined that a claimant who had matched against one or more of these records met the applicable evidentiary requirements and was entitled to compensation.

V. RECOMMENDED COMPENSATION FOR THE SECOND INSTALMENT OF CATEGORY "A" CLAIMS

Pursuant to article 37 (e) of the Rules, the Panel hereby presents its final recommendations on the claims comprising the second instalment of category "A" claims.

Having considered the results of the verification of claims accomplished through computerized matching and, where necessary, through the review of documentary evidence submitted with claim forms, and further having considered all relevant circumstances and materials available with the Commission, the Panel recommends for payment of compensation 162,720 claims submitted by 64 countries and by the United Nations Development Programme (UNDP) and the United Nations High Commissioner for Refugees (UNHCR). The total recommended amount of compensation for the second instalment comes to US$ 626,989,500.

The Panel records that claims that were verified through computerized matching but that could not be recommended for payment due to the limits as to number and country-wise composition of the second instalment are expected to receive due consideration when subsequent instalments are processed for payment of compensation. Claims that could not be included in the second instalment due to such factors as defective format or possible duplication are also expected to receive consideration when subsequent instalments are processed.

The attached Summary Table lists on a country-by-country basis the number of claims for which payment is recommended and the total recommended amount of compensation. A table containing the breakdown of the amounts to be paid to each individual claimant

will be provided to each respective country and international organization separately.

Geneva, 1 February 1995

(signed) Kamal Hossain
Chairman

(signed) Matti Pellonpää
Commissioner

(signed) Rafael Rivas-Posada
Commissioner

Annex

CATEGORY "A" CLAIMS RECOMMENDED FOR PAYMENT
IN THE SECOND INSTALMENT (SUMMARY TABLE)

Country	Number of Claims Recommended for Payment	Amount of Compensation Recommended (US $)
Algeria	8	47,500.00
Australia	18	91,500.00
Austria	11	49,000.00
Bahrain	11	52,000.00
Bangladesh	13,269	51,523,000.00
Belgium	3	14,500.00
Benin	1	2,500.00
Bosnia and Herzegovina	12	48,000.00
Brazil	12	52,000.00
Bulgaria	71	323,500.00
Canada	159	721,500.00
China	6,293	25,159,000.00
Croatia	64	251,000.00
Cyprus	5	15,000.00
Czech and Slovak F.R.[8]	12	55,000.00
Czech Republic	1	4,000.00
Denmark	1	5,000.00
Egypt	54,542	142,529,000.00

[8] These claims were submitted before the Czech and Slovak Federal Republic ceased to exist. Awards of compensation will have to be paid to the Governments of the Czech Republic and the Slovak Republic, respectively, pursuant to an agreement between the two Governments.

Country	Number of Claims Recommended for Payment	Amount of Compensation Recommended (US $)
Ethiopia	10	31,000.00
Federal Republic of Yugoslavia (Serbia and Montenegro)	200	816,000.00
Finland	2	10,000.00
France	41	157,500.00
Germany	13	57,000.00
Ghana	2	8,000.00
Greece	5	28,500.00
Hungary	10	43,000.00
India	12,611	50,158,500.00
Iran	8,986	52,977,500.00
Ireland	10	33,500.00
Italy	32	91,500.00
Japan	12	63,500.00
Jordan	19,762	95,988,500.00
Kenya	3	9,000.00
Korea, Republic of	18	80,500.00
Kuwait	17,149	87,259,500.00
Lebanon	10	25,000.00
Malaysia	6	21,500.00
Morocco	23	68,000.00
Nepal	11	41,000.00
Netherlands	12	48,000.00
Nigeria	2	7,500.00
Pakistan	4,745	19,835,500.00

Country	Number of Claims Recommended for Payment	Amount of Compensation Recommended (US $)
Philippines	1,453	5,779,500.00
Poland	10	39,500.00
Portugal	1	5,000.00
Romania	10	25,000.00
Russian Federation	1,058	4,296,000.00
Senegal	14	89,500.00
Slovakia	1	4,000.00
Slovenia	1	4,000.00
Somalia	27	79,000.00
Spain	9	50,000.00
Sri Lanka	19,333	77,284,000.00
Sudan	130	500,000.00
Syria	4	10,000.00
Thailand	10	40,000.00
The former Yugoslav Repuplic of Macedonia	10	40,000.00
Tunisia	56	188,000.00
Turkey	38	154,500.00
Ukraine	1	4,000.00
United Kingdom	50	168,500.00
United States	59	263,500.00
Vietnam	2,134	8,540,000.00
Yemen	86	352,000.00
UNDP (Algeria)	1	8,000.00
UNDP (Jerusalem)	11	52,500.00
UNDP (Yemen)	13	57,500.00

Country	Number of Claims Recommended for Payment	Amount of Compensation Recommended (US $)
UNDP (Washington)	10	44,000.00
UNHCR (Bulgaria)	3	11,500.00
UNHCR (Canada)	13	74,500.00
UNHCR (Geneva)	3	15,500.00
UNHCR (Iran)	3	7,500.00
Total	162,720	626,989,500.00